

Information Bulletin

Bulletin Number: MB 11-001

Topic: OBTAINING EVIDENCE OF CONSENT FROM PERSONS TO SEARCH THEIR CREDIT BUREAUS

Issue Date: MAY 2011

The Registrar's staff have received a number of complaints from persons whose credit bureaus have been searched by a mortgage broker without the person's consent. In some circumstances, mortgage brokers have asked or claim to have asked for the person's consent over the telephone, and they have then subsequently recorded receiving the verbal consent in a form which documents the time and date of the consent.

Mortgage brokers are reminded that section 107 of the BPCPA addresses credit bureau consents and provides as follows:

- (1) A person must not obtain from a reporting agency a report respecting an individual for a purpose referred to in section 108 (1) (a) [to whom reports may be given] without the consent of the individual.
- (2) A person may obtain the consent of the individual by any method that permits the person to produce evidence that the individual consented, including by prominently displaying the information respecting the consent in a clear and comprehensible manner in an application for credit, insurance, employment or tenancy.

In order to produce evidence of consent, the mortgage broker must produce independent evidence of consent obtained directly from the person whose credit bureau is to be searched. This would include a consent form which has been physically signed by the person, a digital signature from the person through an online mortgage application or an e-mail from the person's e-mail address indicating consent.

A form completed by the mortgage broker with no signature from the person whose credit bureau is to be searched or a note in the mortgage broker's file that a person has provided verbal consent is not acceptable evidence of consent. In addition, verifiable consent given to a mortgage broker from a person to have their credit bureau searched must be obtained prior to the credit bureau search, and not following it.

A mortgage broker or submortgage broker who does not obtain consent from a person prior to searching their credit bureau, in a manner which complies with the requirements of section 107(2) of the BPCPA, may be conducting business in a manner which is prejudicial to the public interest, and may be subject to disciplinary action by the Registrar.

For any additional information on this topic, please contact our office at mortgagebrokers@ficombc.ca.

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